

## Errors and Omissions

These following procedures shall be used for determining the extent to which a consultant that is responsible for the professional quality, technical accuracy, and coordination of services may be reasonably liable for the costs resulting from errors or deficiencies in the services it provides. These procedures are based on those used by the Iowa DOT with its consultants, adapted as needed for use with Local Public Agency (LPA) Federal-aid projects.

The contract shall specify that the consultant is responsible for damages incurred by the LPA due to an error or omission made by the consultant. The LPA Contract Administrator shall be notified upon discovery of an alleged consultant error or omission with the potential to result in damages. Following are the steps in the recovery process:

1. The LPA Contract Administrator shall:
  - a. Assess the preliminary information to determine whether the consultant may have some responsibility for the error or omission.
  - b. If the potential for consultant liability is found, notify the Iowa DOT Administering Office.
2. The LPA Contract Administrator shall notify the consultant either by telephone or in writing of the error or omission as soon as possible after discovery of the problem, and document all telephone conversations with a follow-up letter or e-mail. When notifying the consultant:
  - a. Allow the consultant to respond to the claim of error or omission.
  - b. Discuss with the consultant any conditions that must be met to reach a resolution that is acceptable to the LPA.
  - c. Inform the consultant that the LPA may take action to correct the issue without consultant assistance for any of the following reasons:
    - i. Notification by telephone or in writing to the consultant is not successful.
    - ii. Conditions created by the error or omission require an immediate response to avoid additional damages or construction costs.
    - iii. Other means of resolution with the consultant have been unsuccessful.
  - d. Establish deadlines for the consultant to provide a response
  - e. Inform the consultant that it needs to track all time spent resolving the issue separately.

At this stage, the LPA shall not negotiate, reach agreement or sign any document relative to the consultant's responsibility.

3. The LPA Contract Administrator shall review the consultant's proposed resolution. If acceptable, forward to the Administering Office for review and concurrence.
4. The Administering Office reviews, and if acceptable, concurs with the proposed resolution.
5. If the LPA and the consultant either disagree on the extent of any negligence or are unable to come to a mutual agreement on the resolution, contact the Iowa DOT Administering Office for assistance resolving the disagreement. The Administering Office will notify the Office of Local Systems, which will meet with the parties and attempt to informally resolve the matter. If this proves unsuccessful, the LPA and consultant may seek a resolution through binding arbitration in accordance with Iowa Code chapter 679A, litigation, or other means.
6. Upon implementation of the resolution, the LPA Contract Administrator shall review the financial information and:
  - a. Calculate the expected costs based upon a product without errors.
  - b. Determine the consultant's liability by subtracting the expected costs from the actual costs incurred.
  - c. The LPA Contract Office should request assistance from the Administering Office if needed.
7. Should there be a need for the consultant to pay for any costs to correct its negligence, the LPA Contract Administrator shall send a letter to the consultant requesting payment.
  - a. The consultant may either send a check for the amount or credit the dollar amount to a subsequent invoice.

- b. If the amount will be credited to an invoice, the contract maximum should be evaluated and may be lowered accordingly.
  - c. The consultant shall not be allowed to make payment directly to a third party to remedy any claimed negligence because of the difficulty in verifying and recording these payments.
8. If it is later determined that the consultant was not negligent, the LPA shall compensate the consultant accordingly.
9. The LPA Contract Administrator shall prepare a memorandum summarizing the negligence and all costs recovered. The memorandum shall also include:
  - a. All appropriate information including the letter requesting payment, copies of any payments received, and the consultant's summary of unbilled hours.
  - b. The summary of unbilled hours must list employee names, the number of hours for each employee, the dates worked and the accounting code numbers to which the hours were charged.
  - c. If any portion of the recovered costs were previously reimbursed with Federal or State funds, the LPA's proposed method of repayment. The LPA may either deduct the Federal and / or State share of the recovered costs from its future reimbursement requests for the project (if sufficient unreimbursed costs remain), or reimburse the Iowa DOT for the Federal and / or State share.
10. The LPA Contract Administrator shall send this memorandum and supporting documentation to the Administering Office.
11. The Administering Office will forward the information to the Iowa DOT Office of Finance for review and approval.
  - a. If the recovered costs were previously reimbursed with Federal funds, the Office of Finance, Accounts Payable will initiate a credit-bill with FHWA.
  - b. If the recovered costs were previously reimbursed with State funds, the Office of Finance, Accounts Receivable will issue an invoice to the LPA for the appropriate amount.
  - c. A copy of the LPA's memo and supporting documentation will also be provided to the Office of Finance, External Audit Section.
12. The Office of Finance will notify the Administering Office if the memorandum and proposed repayment method is acceptable. The Administering Office will in turn notify the LPA and the consultant.